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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 June 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Canadian Government Must Take Immediate Steps To Implement Recommendations Of Un Working Group On The Issue Of Human Rights And Transnational Corporations And Other Business Enterprises

At its 38th regular session, the UN Human Rights Council will have before it the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the visit to Canada from 23 May – 1 June 2017, which included visits to Ottawa, Toronto, Edmonton, Williams Lake, Vancouver and Calgary.[1]

Amnesty International calls for the Canadian government to commit to implementing the Working Group's recommendations and draws attention to the following specific areas of concern.

Institutions, Laws, Policies and Practices

Referring to the Canadian government's announcement [2] of a new Canadian Ombudsperson for Responsible Enterprise (CORE), the Working Group calls on the government to ensure the CORE is well resourced, financially and with skilled personnel, so that it can provide effective and timely remedies for and recommendations about complaints about human rights abuses associated with operations of Canadian companies. The Working Group urges that the CORE have total independence from government, undertake meaningful investigations and have investigatory powers to summon witnesses and compel stakeholders to produce documents and any other powers necessary to fully address human rights abuses. Amnesty International strongly supports these recommendations, which are central to ensuring the effectiveness and independence of this important new body.

The Working Group took note of widespread allegations of human rights abuses committed by Canadian companies and lack of access to remedy for such abuses. Amnesty International supports the Working Group's recommendation that the government should take measures to remove well-known barriers to access to judicial remedies, including for foreign plaintiffs, rather than waiting for the courts to develop principles. The government should specifically act to address barriers – such as restrictive application of the principle of *forum non conveniens* - for individuals and communities affected by the overseas operations of Canadian businesses to seek effective remedies in Canada.

Amnesty International strongly endorses the Working Group's recommendation that the federal Government explore ways and means to incentivize human rights due diligence by companies, including through regulations on mandatory due diligence and disclosure.

The Working Group welcomed the new human rights defenders guidelines adopted by the federal government, which specifically acknowledge that human rights defenders in foreign countries may face risks associated with the presence or activities of Canadian companies. The Working Group specifically notes the "large number of reported cases of attacks against human rights defenders linked to the operations of Canadian companies overseas." The government should act without delay on the Working Group's recommendations with respect to human rights defenders, including to:

- increase training with respect to the human rights defenders guidelines for public servants and trade officers;

1 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada, 23 April 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/116/38/PDF/G1811638.pdf?OpenElement.

2 The Government of Canada brings leadership to responsible business conduct abroad, 17 January 2018, https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringsleadershiptoresponsiblebusinesscond.html.

- set out a "clear expectation that Canadian companies operating abroad should respect the rights of local human rights defenders and environmentalists" and to "provide support to defenders and companies to enable the more effective protection of the legitimate activities of defenders;" and

- guard against criminalization of peaceful protest and "misuse of legal processes and the courts as a way of silencing civil society organizations, human rights defenders and indigenous peoples who raise legitimate grievances."

The Working Group calls on the Canadian government to ensure that existing and future trade and investment agreements include adequate safeguards to protect the environment and human and labour rights. The Minister of International Trade announced on 9 March 2018 that negotiations towards a possible trade agreement with the MERCOSUR trading bloc will include "comprehensive gender, labour, human rights & Indigenous assessments." Amnesty International urges the government to ensure that all existing and future trade and investment agreements be subject to such assessments and other human rights safeguards.

The Working Group highlights areas in which greater coordination and collaboration among Canada's federal, provincial and territorial governments is needed in order to ensure effective implementation of key recommendations, including strengthened access to judicial and non-judicial remedies and, more generally, strengthened mechanisms for sharing information and good practices between federal and provincial authorities, as well as across departments at the federal and provincial levels, through regular meetings of federal and provincial ministers. In this regard, the government should ensure that the Working Group's recommendations are taken up in the context of the commitments to reform coordination and implementation of international human rights obligations that were announced by federal, provincial and territorial ministers responsible for human rights at their meeting on 11-12 December 2017.[3]

Mount Polley Mine Disaster

The Working Group made a number of recommendations regarding the human rights impact of the tailings dam breach at the Mount Polley mine in British Columbia in 2014. Amnesty International continues to have serious concerns about the failure to provide remedy and ensure accountability for the human rights harms that resulted from the breach and to implement the reforms needed to prevent similar disasters.

The Working Group recommends Canada carry out an impact study on the disaster in order to "prevent such incidents in the future." Amnesty International underscores that the impact study must be independent from Imperial Metals or its subsidiaries; independent from the province; transparent; well-resourced; designed with the collaboration and consent of affected Indigenous peoples; and have the objective of understanding the causes of the breach in order to prevent similar incidents in the future as well as the impacts of the breach, in order to provide effective remedy and reparations.

The Working Group recommends that persons responsible for the breach be held accountable. To date the government has let three opportunities to investigate and/or lay charges pass by since the breach[4]. Steps must be taken to hold those responsible to account by 4 August 2019, which is when the statute of limitations will expire.

The Working Group recommends that the government notify affected communities of future discharge permits. Amnesty International calls on the federal and British Columbia governments to ensure that permit amendment

3 Federal, Provincial and Territorial Ministers from across the country gather to discuss Human Rights, 12 December 2017, https://www.newswire.ca/news-releases/federal-provincial-and-territorial-ministers-from-across-the-country-gather-to-discuss-human-rights-663728343.html.

4 The BC Conservation Officer Service and RCMP declined to lay charges under provincial environmental regulations before the statute of limitations expired. The BC government also dismissed two private prosecutions filed in 2016 by MiningWatch Canada and in 2017 by Beverly Sellers. http://www.cbc.ca/news/canada/british-columbia/bev-sellars-private-charges-mount-polley-stay-of-proceedings-1.4511305.

applications as well as new permit applications that seek to discharge mine waste water into the environment follow obligations to consult and seek consent where required. Compliance with permit conditions must be enforced.

The Working Group calls for implementation of the recommendations made in August 2017 by the UN Committee on the Elimination of Racial Discrimination (UN CERD) with respect to the impact of the Mount Polley disaster on the rights of Indigenous peoples. Amnesty International calls on Canada to ensure that those recommendations are implemented by the one-year deadline of August 2018 set by the UN CERD.

Indigenous Peoples

The Working Group makes a number of important observations concerning the situation of Indigenous peoples in Canada and the heightened risk of rights violations resulting from situations of marginalization and impoverishment. For example, the Working Group noted the "socioeconomic gaps between indigenous and nonindigenous peoples" and the "pervasive" violence and discrimination faced by Indigenous women and girls.

The Working Group observed that there is an increased risk of violence against women resulting from the influx of large numbers of temporary and transient workers – mostly men - on which extractive industries rely when operating in remote communities. Amnesty International strongly agrees with the recommendation that "both the Government and businesses should therefore pay special attention to preventing discrimination and sexual violence against women in those contexts and apply a gender lens to human rights and environmental impact assessments."

Amnesty International further supports the recommendation that "Indigenous communities should be provided with resources ... to conduct independent, cumulative and holistic impact assessments of projects with adequate gender sensitiveness to ensure that the voices of all members of the communities are heard."

The Working Group highlighted concerns presented to it about violations of Indigenous land rights, including in respect to a case on which Amnesty International is deeply involved, the Site C dam; and focused on "non-compliance with the requirement of free, prior, informed consent in the context of business activities on their lands." Amnesty International agrees that "consultations begin at a stage when significant investments have already been made and are approached in a box-ticking manner, rather than with a genuine desire to obtain the informed consent of the affected communities in accordance with the principle of free, prior and informed consent [FPIC]." FPIC is a human right and Amnesty International endorses the Working Group's expectation that Canada comply with this standard. Proposed new federal impact assessment legislation currently before Parliament[5] should be amended to include consent provisions that require the government not only to "consider" impacts on the rights of Indigenous peoples, but ensure full compliance with FPIC and other human rights obligations.

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5 Bill C-69, An Act respecting a federal process for impact assessments and the prevention of significant adverse environmental effects, http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9630600.